

**REMARKS/ARGUMENTS**

The present amendment is submitted in an earnest effort to advance the case to issue without delay.

Claims 1-9 were rejected for obviousness-type double patenting over the claims in US Patent Application 2002/0122868.

Applicants herewith submit a Terminal Disclaimer which is believed to overcome this rejection.

Claims 1-9 were rejected under 35 U.S.C. § 103(a) as unpatentable over Lomneth et al. (US Patent 4,388,339) in view of Adomako (J. Sci. Fd Agric. 1997, **28**, 384-386) and Sagi et al. (US Patent 4,910,037). Applicants traverse this rejection.

Applicants have identified a pair of unprocessed fats which can be directly employed as a natural hardstock fat for use in edible spreads. These fats are known under the names Allanblackia fat and Pentadesma fat. Each contains a relatively high StOSt content in an amount of at least 48 weight %.

Applicants have demonstrated that when these fats are incorporated into a typical spread, a particularly attractive product arises. The product is easily spreadable from the refrigerator. The spread shows a steep melting line which causes a very pleasant mouthfeel. Further, the hardness values point to good ambient stability. These results are seen from the Example bridging pages 8-9 of the present specification.

Lomneth was cited for disclosing a margarine in the form of a water-in-oil emulsion containing 30-65% soft fat and 35-70% hard fat. Embodiment 1 was cited as illustrating an aqueous phase of about 20% of the composition and an oil phase of 80% of the composition. The hard fat was further stated to contain 32% to 50% SOS triglyceride.

The Examiner has recognized that Lomneth does not disclose the claimed hardstock element of an Allanblackia or Pentadesma fat.

Sagi and Adomako were cited as teaching Allanblackia and Pentadesma fat as known edible fats containing substantial amounts of SOS triglycerides. According to the Examiner, these references especially teach that the fats are used as cocoa butter substitutes. Accordingly, the Examiner was of the opinion that one skilled in the art would find it obvious to insert a hardstock from Allanblackia or Pentadesma fat into a formulation of Lomneth.

Applicants do not consider that one skilled in the art would arrive at the present invention from consideration of Lomneth in view of Adomako and/or Sagi. Lomneth sets cocoa butter and cocoa butter substitute as the standard against which hardstocks must be compared. See column 26, lines 34-37.

Adomako states that tallow fat (from *pentadesma butyracea* S) is "markedly different from cocoa butter and cocoa butter replacement fats in respect of their melting points and fatty acid composition". See the Adomako abstract, penultimate sentence. Based on this statement, it would not at all have been obvious that a pentadesma fat could substitute for cocoa butter or cocoa butter replacement in any edible products requiring similar physical profiles. Most certainly there is no suggestion that Pentadesma fat could be a substitute for

cocoa butter in margarine or spreads. Indeed, Adomako would teach against the use of Pentadesma fat in products where the properties of cocoa butter are needed as an essential element.

Sagi is focused upon identifying a tempering accelerator which can be miscible with cacao butter. See column 1 (lines 27-30 and 67) bridging to column 2 (line 1). The problem is resolved by utilizing as the accelerator a fat or oil derived from cacao butter, mowrah butter, illipe butter, shea fat, sal fat, allanblackia fat, mango fat and kokum fat. See column 3 (lines 1-3). All of the Examples are focused upon production of chocolate. None are concerned with margarine (and the patent does not even mention "spread" products). Allanblackia is the subject of Example 1 and formulated as a chocolate under Example 4.

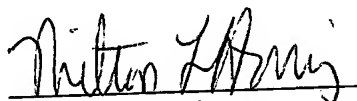
While those skilled in the art may understand from Sagi that Allanblackia might be useful as a tempering accelerator for use with cacao butter, it is not at all evident that Allanblackia would produce a satisfactory spread. Most especially there is no disclosure or suggestion that Allanblackia as a hardstock fat would provide a spread with a steep melting line that would cause a very pleasant mouthfeel. Neither is there any suggestion that a resultant spread with Allanblackia would be easily spreadable from the refrigerator. The law requires more than the mere possibility of using an ingredient from one reference as a component in the product of another. There must be some teaching, suggestion or incentive to achieve that substitution. Obvious to try is not the standard.

Lomneth was cited for disclosing hard fat containing 32% to 50% SOS triglyceride. Apparently the Examiner has taken this from column 5 (line 25). As a further description of SOS, the fat is described as having P:St acid residues greater than 8.5. This means that C<sub>16</sub>

is very substantially higher than  $C_{18}$  saturated acid residues. See column 5 (lines 33-34). By contrast, claims 4 and 5 of the present application require the hardstock to have at least 45 weight % of S in a SOS triglycerides being a saturated  $C_{18}$ - $C_{24}$  carbon chain. Palmitic ( $C_{16}$ ) is not predominant if at all present. Claims 4 and 5 should separately be considered for patentability from that of claim 1.

In view of the foregoing amendment and comments, applicants request the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,



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